(21)

Supreme Court, U.S.
FILED
DEC 15 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-1708

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

STATE OF CALIFORNIA ET AL.,
Appellants,

v.

CABAZON BAND OF MISSION INDIANS, ET AL.,
Appellees.

On Appeal from the United States Court
of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE POST-ARGUMENT BRIEF AND POST-ARGUMENT BRIEF

GLENN M. FELDMAN*
O'CONNOR, CAVANAGH, ANDERSON,
WESTOVER, KILLINGSWORTH & BESHEARS
1 E. Camelback Road, Suite 1100
Phoenix, Arizona 85012
(602) 263-2452
Attorneys for Appellee
Cabazon Band of Mission Indians

BARBARA E. KARSHMER (P.C.)
GEORGE FORMAN
ALEXANDER & KARSHMER
1950 Addison Street, Suite 109
Berkeley, California 94704
(415) 841-5056
Attorneys for Appellee
Morongo Band of Mission Indians

*Admitted in District of Columbia only

BEST AVAILABLE COPY

4pp

MOTION FOR LEAVE TO FILE POST-ARGUMENT BRIEF

Pursuant to Rule 35.6 of the Rules of this Court, appellees Cabazon and Morongo Bands of Mission Indians hereby move this Honorable Court for leave to file the accompanying Post-Argument Brief.

The purpose of the Post-Argument Brief is to correct a misstatement of fact made by counsel for the appellants in rebuttal during oral argument of this case on December 9, 1986. The statement relates to a significant issue and is directly contrary to the stipulated facts in the case. Because it was made in rebuttal, counsel for the appellees had no opportunity to respond during oral argument.

The Post-Argument Brief also corrects a typographical error in Appellees' Brief with respect to the citation of a relevant federal statute.

For the foregoing reasons, appellees respectfully move this Court for leave to file the accompanying Post-Argument Brief.

. . .

. . .

. . .

POST-ARGUMENT BRIEF

During oral argument of this case on December 9, 1986, counsel for the appellants made a factual statement during his rebuttal that was contrary to the stipulated facts in this case. Because this misstatement relates to an important issue, and because it was made during rebuttal and could not, therefore, be challenged during oral argument, the purpose of this Post-Argument Brief is to correct this misstatement. In addition, this Post-Argument Brief corrects a typographical error in Appellees' Brief with respect to the citation of a relevant federal statute.

During rebuttal, counsel for the appellants stated that the Cabazon and Morongo Bands of Mission Indians would qualify as organizations authorized to sponsor bingo games under California law. However, the stipulated facts in this case clearly state that the appellee tribes are "not among the enumerated entities authorized to operate bingo games" under California law. Joint Appendix 64-65, paragraph 24; 82-83, paragraph 15.

In addition, the citation to 18 U.S.C. § 483 at page 30 of Appellees' Brief was a typographical error. The

correct citation should have been 18 U.S.C. § 438, which makes the violation of 25 U.S.C. § 81 a federal criminal offense.

Respectfully Submitted,

GLENN M. FELDMAN*
O'CONNOR, CAVANAGH, ANDERSON,
WESTOVER, KILLINGSWORTH & BESHEARS
1 E. Camelback Road, Suite 1100
Phoenix, Arizona 85012
(602) 263-2452
Attorneys for Appellee
Cabazon Band of Mission Indians

By: _____

BARBARA E. KARSHMER (P.C.)
GEORGE FORMAN
ALEXANDER & KARSHMER
1950 Addison Street, Suite 109
Berkeley, California 94704
(415) 841-5056
Attorneys for Appellee
Morongo Band of Mission Indians

By: _____

*Admitted in District of Columbia only

DATED: December 17, 1986

BEST AVAILABLE COPY